

Preliminary Statement.

On December 19, 1968, Southern California Gas Company and Southern Counties Gas Company of California filed their Motion to Affirm the judgment and decree of the United States District Court which designated a purchaser for the Northwest Division System to be divested from El Paso Natural Gas Company. This Motion followed the filing on November 25, 1968, of a Jurisdictional Statement by the Utah Public Service Commission in support of its Notice of Appeal from the District Court's judgment. However, on February 24, 1969, the Utah Public Service Commission served its Motion to Dismiss that appeal pursuant to Rule 60(2) of the Rules of this Court.

In an unconventional action, this Court issued its order on April 21, 1969, wherein it set the Utah Public Service Commission's Motion to Dismiss for hearing, together with a hearing on the motion of William M. Bennett. Following the hearing on this procedural motion the Court issued its opinion of June 16, 1969, wherein the Court (by a 4 to 2 decision) reversed the judgment of the United States District Court and remanded this case for further proceedings.

The Court's action to date has failed to render any disposition of Movants' pending Motion to Affirm the judgment of the United States District Court.

The present Motion for Oral Argument on the Motion to Affirm that judgment is prompted by the urgent

need for relief from this Court's decision of June 16, 1969. The Moving Parties are charged with the responsibility of serving the needs of eleven million gas consumers in Central and Southern California; this Court's recent decision has increased the burden of this responsibility immeasurably, and compels the Moving Parties to seek a full and complete hearing before this Court on the merits of the issues presented in this litigation. Further, recent developments in the gas supply situation to Southern California motivate the Moving Parties to apprise this Court that the consequences of its recent decision may well frustrate the stated goals of this Court in this extended antitrust proceeding.

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ARGUMENT.

I.

The Court's Unorthodox Resolution of the Pending Appeal Has Failed to Achieve the Competitive Goals Stated by the Court and Has Met With the Overwhelming Objection of the Majority of Interested Parties.

The significance of this Court's June 16, 1969, decision should be measured against the reception it met from virtually all of the interested parties of record. The following State Utility Commissions have specifically urged this Court to sustain the United States District Court's judgment and/or have petitioned for rehearing or modification of this Court's order:

1. Arizona (Arizona Corporation Commission)
2. California (California Public Utilities Commission)
3. Idaho (Idaho Public Utilities Commission)
4. Nevada (Nevada Public Service Commission)
5. Oregon (Public Utility Commissioner of Oregon)
6. Utah (Utah Public Service Commission)
7. Washington (Washington Utilities and Transportation Commission)
8. Wyoming (Public Service Commission of Wyoming)

Similarly, the following Public Utilities have vigorously opposed the Court's ultimate disposition in this case:

1. Arizona Public Service Company
2. California-Pacific Utilities Company

3. Cascade Natural Gas Corporation
4. Intermountain Gas Company
5. Northwest Natural Gas Company
6. Pacific Gas and Electric Company
7. San Diego Gas & Electric Company
8. Southern California Edison Company
9. Southern California Gas Company
10. Southern Counties Gas Company of California
11. Southwest Gas Corporation
12. Tucson Gas and Electric Company
13. Washington Natural Gas Company
14. Washington Water Power Company

The other important entities which have sought rehearing or modification of this Court's decree include the State of California and the Attorney General of the United States.

To illustrate the weight of these objections, the Moving Parties have set forth as Exhibit A hereto a map of the Western portion of the United States which reflects that every state utility commission in that area affected by this Court's order sought confirmation of the Lower Court's judgment and/or seeks relief from the application of this Court's decree. *These state commissions are charged with the responsibility for preserving the public interest in the regulation of gas utilities on behalf of the more than 29 million persons residing in the combined states.* Further, Exhibit B to this Motion demonstrates that nearly every interested public utility in these states has also manifested its disagreement with the result of this Court's recent decision.

The Court's disposition in this case is all the more unfortunate in light of the difficulties faced by the Trial Court. The trial before Judge Chilson was a vigorous, hotly-contested proceeding in which every facet of the public interest was fully explored and developed. During the litigation, the parties could find no unanimity as to an appropriate disposition of the matter. Judge Chilson strode into this "morass" and ultimately achieved the impossible. While there were disappointed parties who would have preferred a different result, and in fact, filed Notices of Appeal to this Court, in the end *every actual litigant* before this Court resolved that the Trial Court's decision could be countenanced. The parties' agreement undoubtedly mirrored their realization that the prospects for the Northwest System's becoming a viable competitor in the California market were being dashed upon the shoals of delay.

As will be discussed below, this Court's recent decision paralyzes the development of the Northwest Division at a critical moment in its history. This Court can easily recognize that the growth of the Northwest Division is inhibited by this Court's action of further suspending the New Company in the processes of this seemingly-endless litigation. Yet, the consistent goal enunciated by this Court in its several decisions in this case is for the divested Northwest Division to become a viable competitor in the burgeoning California gas consumption market. The Court's goal is almost certainly doomed if the Court fails to provide an adequate hearing wherein the parties can argue the merits of this case.

II.

The Prodigious Growth of the Southern California Gas Consumption Market Demands the Institution of a New, Major Gas Supply Project Which Must Be Undertaken With or Without the Participation of New Company.

The continued growth of the Southern California gas consumption market has required the Movants to pursue new and varied methods of achieving the required gas supply. The extent of this growth in gas consumption must be deemed to exceed the most generous anticipation of all of the parties at the inception of this litigation. Indeed, the market has grown beyond the limits of its traditional gas supply sources, and the Movants are now required to seek new and extensive gas resources.

The Northwest Division System would logically desire to participate in a project to provide the needed gas supplies for the Southern California market. The Court has long recognized this candidacy on the part of New Company and has directed its judicial efforts toward achieving this goal.

Yet, the progress of history cannot afford, and will not await, further delays in the birth of New Company. The real demands for new gas supplies are too urgent to withstand the tortuous proceedings which will necessarily be encountered in this continued litigation. In light of the Court's repeated protestations that New Company should become a factor in the gas supply market for California, the Moving Parties feel obliged to apprise this Court that the necessary supply project must proceed with or without the participation of New Company. The Court is undoubtedly aware that if New

Company falters on the threshold of entry into this new gas supply project, its competitive position will be unalterably impaired.

III.

New Developments Since the Court's Decree of June 16, 1969.

As we have heretofore endeavored to point out to this Court there is a gas supply shortage in the traditional sources of gas supply for the Southern California market. It has become clear that the next large increment of gas supply to meet that market will have to come from the North, either Canada or the State of Alaska. In long term, it is hoped that New Company will be able to develop gas supply in the Rocky Mountain area which can compete for the Southern California market. Should New Company desire to participate in the California market, however, its efforts must be directed as quickly as possible to participation in a project from the North. It was in recognition of this reality in today's gas supply picture that the applicant selected by the Trial Court, Colorado Interstate Corporation, entered into negotiations for precisely such a supply and contracted with the Southern California parties. The next gas supply project to serve Southern California will come of necessity from Canada or Alaska, and efforts are currently underway to achieve that result.

A second new development which has occurred since this Court's decision is William M. Bennett's represen-

tation of one of the disappointed applicants, Paradox Production Corporation.

It would be useful to review briefly Mr. Bennett's appraisal of the applicants and his representation of various parties in this case. In the Jurisdictional Statement filed in 1964 on behalf of the State of California by William M. Bennett, Colorado Interstate Gas Company, Paradox Production Corporation, and Pacific Western Pipeline Corporation were referred to as qualified applicants.

On March 24, 1969, William M. Bennett filed a document in this proceeding to have himself appointed by the Court "... as Counsel to Represent the Public Interest". In that pleading, William M. Bennett referred to his long association in this proceeding representing the State of California in the following language:

"Comes now WILLIAM M. BENNETT, an officer of this Court and states as follows:

"Commencing in 1956 and to date Petitioner has been Counsel of record for the State of California in the El Paso monopoly proceedings. . . . Petitioner represented [sic] California in the subsequent divestiture proceedings before the District Court in Salt Lake City and Denver before Judge Chilson. Petitioner represented California in dealings with the United States government imploring and persuading [sic] it to pursue this litigation sometimes successfully sometimes not. Petitioner as party of record filed a Notice of Appeal from the divestiture decree of Judge Chilson."

During the course of the oral argument on his motion held on April 29, 1969, William M. Bennett referred to the cash sale proposal of Paradox Production Corporation and Pacific Western Pipeline Corporation and urged that only a cash sale would satisfy the mandate of this Court. Six days later, on May 5, 1969, Paradox Production Corporation filed with this Court a document entitled, "Notice of Availability as Purchaser", urging that:

"Paradox is the only one who has continually and consistently, since its letter of May 22, 1964, maintained that a sale for cash of the assets to be divested is the most expeditious way and the only method by which the mandates of this Court can be adequately carried out."

It is now public knowledge, undenied by William M. Bennett, that he represents Paradox Production Corporation.

The tragedy of the entire situation is that the interests of gas consumers in the Western United States have been confused and emasculated. If the interests of those gas consumers are to be served, it is imperative that this Court grant the pending Motion to Affirm and the related Motion for Oral Argument filed by Southern California Gas Company and by Southern Counties Gas Company of California.

Conclusion.

The overwhelming response to this Court's June 16, 1969, decision, together with the possible frustration of this Court's ultimate goals, prompt Southern California Gas Company and Southern Counties Gas Com-

pany of California to move this Court for oral argument upon the pending Motion to Affirm the judgment and decree of the United States District Court.

Respectfully submitted,

SOUTHERN CALIFORNIA GAS COMPANY,
SOUTHERN COUNTIES GAS COMPANY
OF CALIFORNIA,

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The State Commissions which urged the U.S. Supreme Court to affirm the U.S. District Court judgment and/or petitioned for rehearing or modification of the U.S. Supreme Court decree, represent a population of 29,110,000.⁽¹⁾

(1) U.S. Department of Commerce 7-1-69 Provisional Estimates



EXHIBIT A

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637

The distributing utilities which urged the U.S. Supreme Court to affirm the U.S. District Court judgment and/or petitioned for rehearing or modification of the U.S. Supreme Court decree, represent 95% of the gas utility customers in those states whose Commissions are represented on EXHIBIT A.



EXHIBIT B